



California's protection and advocacy system

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SERVICES AND DUE PROCESS UNDER THE HCBS WAIVER

The changes included in the Budget Trailer Bill may be limited somewhat if you and the service you want to keep or get are covered under the Medicaid Home and Community Based Services (HCBS) Waiver for regional center clients (often called the "DD waiver").¹ This is because services covered under the HCBS DD Waiver are Medi-Cal services subject to the rules and consumer protections that apply to other Medi-Cal services.

Who is Covered Under the HCBS DD Waiver?

The HCBS DD Waiver covers regional center clients who are covered by Medi-Cal, whose disability is severe enough to qualify for placement in one of the medical facilities serving persons with developmental disabilities (ICF/DD, ICF/DDH and ICF/DDN) and who receive at least one Waiver service. Those qualifying for Medi-Cal include those who qualify for Medi-Cal through the Waiver's institutional deeming provision. Institutional deeming means the income or resources of a parent or spouse are not counted in determining the Medi-Cal eligibility of a consumer. If you do not know if you are covered under the Waiver, ask your Service Coordinator or look on your copy of your last IPP.

¹ Go here for a copy of the DD HCBS Waiver: <http://www.dhcs.ca.gov/services/medi-cal/Documents/DDRenewalApp2006TO2011.pdf> Each regional center also has a copy of the DD HCBS Waiver for you to review.

What Services are Covered Under the HCBS DD Waiver?

Attached is a list of the services covered under the HCBS DD Waiver. The list is taken from Chapter 13 of our “Rights Under The Lanterman Act” manual.²

What are My Rights Under the HCBS DD Waiver?

First, the waiver document itself defines the scope of the service and takes precedence over any conflicting language in the Lanterman Act.

Second, the State has to ensure that the health and welfare of regional center clients receiving services under the Waiver is protected.³

Third, for children and youth under the age of 21 years, the federal EPSDT medical necessity standard applies. Services are covered when “necessary to correct or ameliorate defects and physical and mental illnesses or conditions.”⁴ This standard is broader than the one applicable to adults.

Fourth, while Medi-Cal does not cover experimental services, it does cover investigational services when the Medi-Cal criteria are met.⁵

What About Fair Hearings?

Disputes about Waiver eligibility or services under the Waiver are handled through the regular Lanterman Act fair hearing procedures. The Administrative Law Judge (ALJ) will first look to see if the matter can be resolved favorably for the consumer under the Lanterman Act. If not, the ALJ will then look at rights under the Waiver and the State and Federal

² Go here for a copy of Chapter 13 about the HCBS Waiver for regional center clients: <http://www.disabilityrightsca.org/pubs/506301Ch13.pdf> Or call our 800 number and we will send you a copy of Chapter 13.

³ 42 U.S.C. § 1396n (c) (2) (A). This standard is an added element in the medical necessity standard and determination.

⁴ Cal. Code Regs., tit. 22 § 51340 (e) (3) (A). Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services federal medical necessity standard also at 42 U.S.C. § 1396d (r) (5).

⁵ Cal. Code Regs., tit. 22 §§ 51303 (g) (experimental not covered), 51303 (h) (when investigational covered), 51056 (c) (difference between experimental and investigational).

Medi-Cal/Medicaid program. You should ask the ALJ to do this if you are at hearing.